



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 15, 2005

Call to Order The regular meeting of the Sussex County Council was held Tuesday, November 15, 2005 at 10:00 a.m. in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	President
Lynn J. Rogers	Vice President
George B. Cole	Member
Dale R. Dukes	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
James D. Griffin	County Attorney

M 609 02 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the
Approve Agenda, as posted.
Agenda

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
 Mr. Dukes, Yea; Mr. Rogers, Yea;
 Mr. Jones, Yea**

M 610 05 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the
Approve minutes of November 1, 2005.
Minutes

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
 Mr. Dukes, Yea; Mr. Rogers, Yea;
 Mr. Jones, Yea**

Corre- Mr. Griffin read the following correspondence:
spondence

**EVELYN WILSON, THE COVERDALE CROSSROADS COMMUNITY COUNCIL, INC. BRIDGEVILLE, DELAWARE.
RE: Letter in appreciation of the Council's continued support of the efforts**

of the Coverdale community.

BOYS & GIRLS CLUBS OF DELAWARE, WILMINGTON, DELAWARE.

RE: Letters in appreciation of Mr. Dukes' grant funding in support of the Laurel Boys & Girls Club and the Western Sussex Boys & Girls Club.

**Corre-
spondence
(continued)**

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL, DOVER, DELAWARE.

RE: Legal notice of a Public Hearing on a proposed amendment to Regulation 1201 – Accidental Release Prevention Regulation, which is scheduled to be held on Monday, December 5, 2005.

**Diamond
State
Community
Land
Trust**

Anne Marie Townshend, Marlena Gibson and Rev. Terrance Briggs gave a presentation on the Diamond State Community Land Trust's mission and their vision for the future of housing in Delaware.

- **A community land trust is a private, non-profit, grassroots corporation created to acquire and hold land for the benefit of a community and provide affordable access to land and housing for community residents.**
- **A community land trust acquires properties – either land and buildings or simply vacant land – and develops or rehabilitates housing on that land; the structures are sold to income-qualified buyers, but the CLT retains ownership of the land.**
- **Long-term ground leases provide for the exclusive use of the land by the homeowner and their descendants. This protects the homeowner's interests in security, privacy, legacy, and equity. Homeowners are eligible for all the legal and tax benefits of home ownership. CLT homeowners can sell their homes whenever they decide to do so; however, the land lease requires that the home be sold back to the CLT or to another lower income household, and for an affordable price.**
- **Restricting the resale price preserves the subsidies that went into making the home affordable and keeps the home affordable for future generations.**
- **CLT's are funded through grants, land donations, private donations, public subsidies, loans, ground lease fees, and membership dues.**
- **The mission of the Diamond State Community Land Trust is to strengthen communities by creating and stewarding perpetually affordable housing and promoting sustainable use of the land.**
- **The vision of the Diamond State Community Land Trust is for an increasing stock of perpetually affordable housing; a ladder of housing opportunities for Delaware's workforce; fair housing and diverse communities; and an equitable balance between individual and community interests.**

- **The Diamond State Community Land Trust is working on six projects: Land Banking, Buyer Initiated Program, Enforcing Covenants, Manufactured Housing, Support Services to Neighborhood CLTs, and Acquisition & Rehabilitation. Their focus will be on Kent and Sussex counties, with the primary focus on Sussex County due to the lack of availability of affordable housing.**

**M 611 95
Adopt
Tribute**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt the Tribute congratulating the First State Community Action Agency, Inc. in celebration of their Fortieth Anniversary on the 16th of November 2005.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**Presentation
of Tribute**

The Tribute was presented to Bernice Edwards, Executive Director of First State Community Action Agency, who was in attendance to accept the Tribute and to thank the Council for their past and continued support.

**NCALL
Research/
Check
Presentation**

The County Council presented a check to NCALL Research, Inc. in the amount of \$20,000. Lucia Campos was present representing NCALL's Sussex County office in Georgetown. She explained that NCALL provides home ownership counseling and financial literacy education. She also told Council that the funds will be used for their new Georgetown Office located next to the fire station on Bedford Street.

**Adminis-
trator's
Report**

Mr. Stickels read the following information in his Administrator's Report:

1. Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities

The Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities will be meeting on Monday, November 21, 2005, at 10:00 a.m. at the Sussex County Administrative Office Building on The Circle in Georgetown. Included with this report is a copy of the agenda.

2. Holiday Schedule

County offices will be closed Thursday, November 24, and Friday, November 25, 2005, to allow employees to observe the Thanksgiving Day holiday.

There will not be a Council meeting on Tuesday, November 22. The next regularly scheduled Council meeting will be at 10:00 a.m. on Tuesday, November 29, 2005.

**EMS Vehicles/
Bid Award** **Mr. Shade, Purchasing Officer, reported on the bid results for the purchase of two (2) new chassis for Paramedic Response Vehicles. Two (2) vendors responded to the Solicitation for Bids:**

I. G. Burton Chevrolet \$30,815.00 per unit

First State Chevrolet \$36,540.00 per unit

(continued) **Mr. Shade recommended that the bid be awarded to the low bidder, I. G. Burton Chevrolet.**

M 612 05 **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council accepts the bid of I. G. Burton in the amount of \$30,815.00 per unit for the purchase of two new Chevrolet Chassis for use as Paramedic Response Units.**

Accept Bid for EMS Vehicles

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**Subdivision Appeal/
Spring Breeze Associates** **The County Council discussed an appeal of the Planning and Zoning Commission's decision to deny an application of Spring Breeze Associates for the subdivision of land in an AR-1 Agricultural Residential District by dividing 139.62 acres into 235 lots (cluster subdivision), located north of Road 48 (Hollymount Road), 1,380 feet east of Road 285.**

Mr. Abbott noted that the application was originally filed as a 169-lot standard subdivision prior to the adoption of the Cluster Ordinance. This application was withdrawn and a new application filed. Following the denial of a 275-lot cluster subdivision application, the applicant filed for a 235-lot cluster subdivision. On July 28, 2005, the Commission denied the 235-lot cluster subdivision application, for the following reasons:

- **The subdivision is in an area where there are currently large lots. The proposed cluster development with 7,500 square foot lots would be out of character with the surrounding development.**
- **The property currently is heavily wooded. With the smaller clustered lots and the areas set aside for wastewater treatment, nearly all of the existing trees would have to be removed. Under a standard subdivision with larger lots, this would not be necessary.**
- **The Commission did not believe that the cluster design is innovative or creates a total environment for the residents that is superior to a standard subdivision. There is not a great deal of active open space for the residents and the amenities that have been provided are not superior to those typically included in a standard subdivision.**
- **The original standard subdivision application that was filed called for 169 lots compared with 235 as currently proposed. The cluster**

Subdivision
Appeal/
Spring
Breeze
Associates
(continued)

design only created more potential lots without substantial design improvements over a standard subdivision.

- The Commission believes that that the items in 99-9(C) would be adversely affected by the clustering. For example, smaller lots would negatively affect the existing landscape and natural features. Clustering wouldn't minimize tree and vegetation removal. It would also potentially increase run-off and flooding. Also, it's not compatible with other area land uses, which are larger residential lots. With clustered lots and the concentrated removal of trees, there would be significant grade changes and alteration of the existing terrain and landscape caused by clearing and grubbing the trees and vegetation.
- Taking this into consideration, the Commission believes that a standard subdivision for this parcel, with fewer lots that are larger in size, would be more appropriate than 235 clustered lots.

On September 13, 2005, the County Council held a Public Hearing on the appeal, at which time action was deferred.

Mr. Rogers expressed the following concerns about the application: the lack of signatures and seals of surveyors and engineers; whether or not the application meets the Code; the flood plain boundary lines are not shown on the plans; there are not many amenities offered; and the application is not a true cluster development.

Mr. Phillips expressed that the application provides more than 40 percent of open space; that it is a superior plan; that a standard subdivision plan could jeopardize wetlands; and that this application provides for wetlands into perpetuity.

Mr. Abbott read a list of possible conditions for the Council's consideration.

Mr. Phillips expressed concern that if the Council approves the application with conditions attached, a RPC would be created as opposed to a by-right cluster development, which is what it was designed for.

Mr. Cole expressed that the cluster application does not provide for a superior design; that it does not meet the seventeen criteria set out by the subdivision ordinance; that it is not in character with the surrounding area; and that wetlands protection, loss of woodland, etc. cited by the Planning and Zoning Commission were good reasons for denial.

M 613 05
Uphold
P&Z's
Decision
to Deny
Subdivision
Application

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to uphold the Planning and Zoning Commission's decision to deny the subdivision application of Spring Breeze Associates (Subdivision 2004-8).

Motion Denied: 3 Nay, 2 Yea.

Vote by Roll Call: Mr. Phillips, Nay; Mr. Cole, Yea;

(Denied)

**Mr. Dukes, Nay; Mr. Rogers, Yea;
Mr. Jones, Nay**

**M 614 05
Approve
Subdivision
Application**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the subdivision application of Spring Breeze Associates (Subdivision 2004-8) with the following fourteen stipulations, which includes the reduction of the density to 176:

**M 614 05
Approve
Subdivision
Application
(Spring
Breeze)
(continued)**

- 1. There shall be no more than 176 lots within the subdivision.**
- 2. The applicant shall cause to be formed a homeowner's association to be responsible for the maintenance of streets, roads, any buffers, storm water management facilities, and other common areas. The deed restrictions shall also include provisions for recycling of yard waste and shall be subject to the review and approval of the Assistant County Attorney.**
- 3. All entrances shall comply with all of DelDOT's requirements. The developer shall comply with all off-site improvements as may be required by DelDOT.**
- 4. The stormwater management system shall meet or exceed the requirements of the State and County.**
- 5. The use of a central community sewer system and stormwater management system shall maximize ground water recharge and erosion and sediment control measures shall comply with all State and County requirements. The wastewater treatment system shall be designed to be able to tie into a County system when one becomes available. The perimeter of the wastewater treatment site shall be landscaped.**
- 6. The applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the final record plan.**
- 7. There shall be a minimum 150-foot forested buffer along the southerly and westerly boundary lines.**
- 8. No wetlands shall be included within any lot lines. There shall be a minimum 50-foot forested buffer from the existing wetlands line.**
- 9. Street lighting shall be provided and the location of the streetlights shall be shown on the final record plan.**
- 10. Sidewalks shall be provided on both sides of all streets within the subdivision.**
- 11. A swimming pool and a community clubhouse shall be centrally located within the subdivision. These amenities shall be constructed within two years of the issuance of the first building permit.**
- 12. Provisions for an area to be used as a school bus shelter shall be set aside near the entrance for the protection and safety of the children in the area.**
- 13. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- 14. The final site plan shall be reviewed and approved by the Planning and Zoning Commission.**

[Mr. Rogers asked Mr. Dukes to withdraw his Motion so that additional

conditions could be considered. He expressed concern about several issues and requested that stipulations be added to require that (1) an additional emergency entrance be designated, (2) active recreational activities such as tot lots, parks, ball parks, tennis courts, etc. be required, and (3) the pool size be in accordance with State requirements. Mr. Dukes did not withdraw his Motion.]

M 614 05
(continued)

Motion Adopted: 3 Yea, 2 Nay.
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Nay;
Mr. Dukes, Yea; Mr. Rogers, Nay;
Mr. Jones, Yea

**Public Hearing/
Joy Beach
Suburban
Community
Improvements
Project**

A Public Hearing was held to consider the assessment rolls of the Joy Beach Suburban Community Improvements Project.

Mrs. Deptula of the Sussex County Engineering Department distributed a listing of the Assessment Rolls, as revised on November 11, 2005. She noted that the listing has been amended and there have been two changes made to the original advertised Assessment Rolls. The first change was that Parcel 140 has been reduced from 154.09 to 100 feet; she noted that this was an oversight from the original preparation of the Assessment Rolls. The second change was the deletion of the front footage of Parcel 89 from the Rolls due to objections from the Joy Beach Property Owners Association. Mrs. Deptula stated that a lawsuit is pending that the County is a party in and the Engineering Department believes it would be better to wait until after the lawsuit has been settled before deciding whether or not to include Parcel 89 (owned by John Burton). The two changes resulted in a 4 cent increase overall on the front footage rate from \$2.32 per front foot to \$2.36 per front foot. Ms. Deptula stated that the Homeowners Association is in agreement with the changes.

Public comments were heard.

Charles Pappa, President of the Joy Beach Homeowners Association, stated that the Association accepts the project, as presented.

John S. Burton, Sr. stated that he and his son own 160 acres that abut County Road 279B directly across from the Joy Beach area. A portion of this land on the south side of County Road 279B was plotted as part of the Joy Beach development. The north side of County Road 279B was completed as a Development District. The south side that he bought was not completed. The plot shows that both sides of the 50 foot road known as County Road 279B were to have access. The plot shows the road entering his property off of County Road 279B (south side) and being in the same location as the 50 foot assessment entrance in question. Mr. Burton stated that he believes it is unfair that Parcel 89 has been removed from the Assessment Rolls. He stated that, even though there is litigation on the ownership of County Road 279B, he feels the 50 foot assessment of Parcel 89 is fair and that it should be reinstated on the Assessment Rolls. Mr.

Burton asked Council to defer the acceptance of the Assessment Rolls if Parcel 89 is not included.

Charlie Janvier of Gull Drive stated that no one has denied access to Mr. Burton; that they do not have an argument with him; that they didn't think it was fair to charge him because other properties also exist along the same road and if Mr. Burton is included, the other properties should be included; and that it is the Association's project.

**Public
Hearing/
Joy
Beach
Suburban
Community
Improve-
ments
Project
(continued)**

Mr. Griffin advised the Council that the County's decision would have no bearing on the Chancery Court's decision on whether or not Mr. Burton has access to the road.

Mr. Griffin noted that (1) the Burton property was not within the boundaries of the original project, (2) the project was advertised with the inclusion of the Burton property (50 feet), and (3) the project, as presented at this Public Hearing, is being recommended with two changes, one of which is the removal of the Burton Property.

Several Joy Beach residents stated that they believe the inclusion of Mr. Burton's property in the sewer assessment would give him an advantage in the lawsuit.

Mr. Griffin stated that the Engineering Department has recommended that these issues be resolved before including Mr. Burton's property in the assessment rolls.

Mr. Griffin stated that he received letters from the attorneys on both sides of the issue, one asking that the property be included and one asking that the property be excluded. He stated that the letters are made a part of the record of the Public Hearing.

Tom Barbro clarified that the bulkhead on his property has nothing to do with sewer and that it is for decorative landscaping purposes only.

Wolfgang Franke spoke and referred to a letter from Drew Boyce of DelDOT. Mr. Franke stated that the letter indicates that Joy Beach owns Bookhammer Road. He stated that Mr. Burton has never been denied access to his property. He noted however, that the Association would not allow Mr. Burton to build a road on their right-of-way, a 50-foot road across the wetlands.

Charles Pappa, President of the Joy Beach Homeowners Association, stated that he wanted to clarify that Mr. Burton was not a part of the original assessment when the project was formed under the Suburban Community Improvement Project.

The Public Hearing was closed.

M 615 05

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to amend the

Amend Proposed Assessment Rolls/ Joy Beach SCI Project	Proposed Assessment Rolls for Joy Beach Suburban Community Improvement Project, as advertised, including the front footage assessment of 50 feet for Parcel 89 (Burton property) and with an amendment to reduce the front footage assessment for Parcel 140 (Breitenger property) from 154.09 to 100 feet. Motion Adopted: 5 Yea.
M 615 05 (continued)	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 616 05 Adopt R 024 05 (Joy Beach Suburban Community Improve- ments)	A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Resolution No. R 024 05 declaring the amount of the assessment and levy against each freeholder of property of Sussex County Project No. 04-01, Joy Beach Suburban Community Improvements, as advertised and amended. Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Recommen- dation	Mr. Stickels recommended, due to the time, that the “Request for Executive Session” and “Executive Session” be deleted from the agenda.
M 617 05 (Motion Died)	A Motion was made by Mr. Cole to delete “Request for Executive Session” and “Executive Session” from the Agenda. The Motion died for the lack of a Second.
Water and Sewer Billing Automatic Payments Recommen- dation	Mr. Baker, Finance Director, recommended that the County begin offering automated clearing house services for payments as an option for customers to pay quarterly water and sewer bills. Rick Borgenson and Lee Walls were present from Citizens Bank. Mr. Baker noted that this would be a voluntary service for customers. If customers decide to participate, payments would be automatically withdrawn from their bank accounts on the due date and deposited to the County’s account. Mr. Baker stated that the advantages for the County would be that there would be less time spent by the Utility Billing Department processing checks and it may help improve collection percentages.
M 618 05 Approve Bank Resolution to Authorize Automated Clearing	A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council approves Bank Resolutions which authorize Automated Clearing House transfers for payment of County sewer and water district bills by customers on a voluntary basis. Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;

**House
Transfers**

**Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**IRB
Application
(Cadbury
at Lewes)**

**IRB
Application
(Cadbury
at Lewes)
(continued)**

Mr. Baker discussed an Industrial Revenue Bond application from Cadbury at Lewes. On November 8, 2005 the Industrial Revenue Bond (IRB) Committee met and reviewed an application to increase the previously approved IRB from \$45,000,000 to \$49,500,000. In November 2003, the Council authorized up to \$45,000,000 for an IRB for this project, which included a \$3.5 million Bond Anticipation Note. In November 2004, Cadbury issued the Note which was used to purchase land and for other costs related to the project. Due to increased project and construction costs, Cadbury is requesting an increase in the authorized IRB amount. The funds would also be used to pay off the Bond Anticipation Note. A draft feasibility study has been received indicating that the project would support approximately \$48,890,000 of bonds. The project is for a continuing care retirement community; it is expected to employ over 100 full-time employees plus provide work for approximately 150 construction workers. The project is located on Gills Neck Road near Kings Highway outside of Lewes. Mr. Baker advised that the bonds will not constitute a debt or liability to the County.

**M 619 05
Adopt
R 023 05**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Resolution No. R 023 05 entitled “A RESOLUTION AMENDING PROJECT RESOLUTION NO. R 027 03 IN ORDER TO INCREASE THE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT REVENUE BONDS AUTHORIZED TO BE ISSUED FOR THE CADBURY AT LEWES PROJECT FROM \$45,000,000 TO A MAXIMUM OF \$49,500,000”.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**Emergency
Operations
Center
Project/
Bid
Results**

Mr. Izzo, County Engineer, reported on the bid results for the Emergency Operations Center Project (Sussex County Project No. 04-02). Mr. Izzo distributed a spreadsheet showing the four bids that were submitted. The apparent low bidder was Willow Construction, with a bid of \$6.9 million; the architect’s estimate of \$6.8 million. Mr. Izzo reported that a problem arose about fifteen minutes before the bids were opened. A call was received from Richard Y. Johnson & Son, Inc. They stated that they had received information from their roofing subcontractor that he could not meet the specifications, as bid. The roof specifications required that both portions of the roof meet a sustained 150 mile wind load and be warranted for a 15-year period. Mr. Izzo reported that Willow Construction, the apparent low bidder, did not include in their bid the cost for providing the roofing specifications required and that Richard Y. Johnson has protested the bid. Mr. Izzo stated that after a review, it appears that none of the

roofing subcontractors could provide the required roofing specifications. Based on this information, Mr. Izzo recommended that all of the bids be rejected. Mr. Izzo stated that, with Council's approval, an addendum would be issued to clear up this issue, new bid documents would be released, a pre-bid meeting would be scheduled for November 30th, and new bids would be opened on December 14th. Mr. Izzo stated that he would recommend a reduction in the wind load requirement to 120 miles per hour in the new bid process.

**M 620 05
Reject
Bids for
EOC
Project**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that all bids submitted for Sussex County Project No. 04-02, Emergency Operations Center Building, be rejected and that the project be re-bid immediately.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**Purchase
of Pump
Station/
Banks
Harbor
Retreat
Marina/
North
Millville
SSD**

Mr. Izzo, County Engineer, presented a proposal to purchase property for a pump station site for the Millville Sanitary Sewer District (Pump Station No. 2 – Banks Harbor Retreat area). He noted that the best site would be in the Banks Harbor Marina parking area and that the County would need to acquire a pump station site, a permanent easement and a temporary construction easement. An appraisal has been performed which determined the value of the property to be \$57,000. The County has been in negotiations with the Homeowners Association that controls the marina and they are not agreeable to \$57,000; however, they have agreed to sell the property for \$80,000. Mr. Izzo reported that the County has looked at alternative sites in the vicinity but they would require construction further inland, resulting in additional costs of approximately \$100,000. It was noted that a developer will be paying over \$2 million to build a transmission line to this site.

**M 621 05
Approve
Purchase
of Land
for Pump
Station/
Banks
Harbor
Retreat
Area**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the purchase of a portion of Parcel 1-34-12-270 to be used to site Pump Station No. 274, containing a Fee Simple Acquisition, a Permanent Easement, and a Temporary Construction Easement, as documented by the Contract of Sale executed with Banks Harbor Marina, Inc.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

Introduction Mr. Phillips introduced the Proposed Ordinance entitled "AN

- of Proposed Ordinance** **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF DNREC-APPROVED BIOSOLIDS AS FERTILIZER AND AS AN AMENDMENT TO CONDITIONAL USE NOS. 1373, 1399, AND 1498 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 88.0 ACRES, MORE OR LESS” (Conditional Use No. 1660) filed on behalf of Synagro-WWT, Inc. The Proposed Ordinance will be advertised for Public Hearing.**
- (continued)**
- Introduction of Proposed Ordinance** **Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF DNREC-APPROVED BIOSOLIDS AS FERTILIZER AND AS AN AMENDMENT TO CONDITIONAL USE NOS. 1372, 1400, AND 1499 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 220.0 ACRES, MORE OR LESS” (Conditional Use No. 1661) filed on behalf of Synagro-WWT, Inc. The Proposed Ordinance will be advertised for Public Hearing.**
- Introduction of Proposed Ordinance** **Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE SALE OF CRAFTS AND GARDEN RELATED SUPPLIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.29 ACRES, MORE OR LESS” (Conditional Use No. 1662) filed on behalf of Kimberly Elliott. The Proposed Ordinance will be advertised for Public Hearing.**
- M 622 05**
Authorize Executive Session **A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to authorize an Executive Session to be held for the purpose of discussing land acquisition.**
- Motion Adopted: 5 Yea.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea
- Location of Executive Session** **Mr. Stickels announced that the location of the Executive Session would be the South Conference Room on the Third Floor (Engineering Department) of the County Administration Building.**
- M 623 05**
Recess/ Go into Executive Session **At 12:28 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Dukes, to recess and go into Executive Session.**
- Motion Adopted: 5 Yea.**

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

Executive Session An Executive Session of the Sussex County Council was held at 12:35 p.m. in the South Conference Room on the Third Floor of the County Administration Building. The purpose of the Executive Session was to discuss land acquisition.

End Session The Executive Session concluded at 1:05 p.m.

Reconvene Mr. Jones called the Council back into regular session at 1:10 p.m.

M 624 05 Recess A Motion was made by Mr. Dukes, seconded by Mr. Cole, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene Mr. Jones called the Council back into session at 1:45 p.m.

Public Hearing (C/U No. 1624) A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (64 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 16.01 ACRES, MORE OR LESS” (Conditional Use No. 1624) filed on behalf of Design Consultants Group, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on October 27, 2005 at which time they recommended that the application be approved, with conditions.

(See the minutes of the Planning and Zoning Commission dated October 27, 2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing and recommendation of approval. The summary was admitted as part of the County Council’s record.

Mr. Lank reported that a letter was received from Joseph P. Semasek, dated October 25, 2005, in opposition to the application. In his letter, Mr. Semasek states that the roads are already congested and dangerous; that there is no infrastructure to support the development; and that this proposal would add to the destruction of the wetlands to the rear of the property.

The Council found that Eugene Bayard, Attorney, was present and stated that he represents Joe Goldstein, the owner of the property; that DC Group is the Applicant; that the parcel is located in the Environmentally Sensitive Developing District; that the conditional use is permissible for townhouses

under Section 115-39 of the County Code; that what is proposed is consistent with the trend and character of the area; that what is proposed is no more or less than a GR Subdivision would be on the property; that the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District has allocated 64 EDUs for this property and that is what is proposed; and that the project has been designed to be consistent with Livable Delaware and the County's Land Use Plan.

Public
Hearing
(C/U
No. 1624)
(continued)

Paul Westhelle of Volmer Associates (formerly of DC Group) was also present on behalf of the applicant. He stated that the site behind the subject property is used for construction storage; that there are no wetlands within 100 feet of the site; that a custom pool, tennis court, shuffleboard courts, etc. are proposed; that a pond is proposed; that they propose to create a focal point around the pond in the layout of the project; that a park will be a central feature; that all garages face into the interior; that there should be minimal tree disturbance; that DelDOT requested one entrance instead of the two proposed entrances; that an entranceway is proposed as a center island with landscaping; and that streetlighting is proposed with downward illumination.

Robert Kauffman of Sea Coast Realty and resident of Cedar Neck, discussed the character of the area. He stated that it is a developed area; that several subdivisions exist in the area; and that he has reviewed the surrounding projects and developments. He stated that the project would have a positive impact on the area and that there is a demand for this type of housing.

Mr. Cole asked about a farm lane that goes through the center of the project to serve the parcel at the rear of the property. Mr. Bayard responded that a service road has been designed for that property giving the property owner better access than he currently has.

Mr. Bayard advised that the Applicant agrees to the conditions proposed by the Commission. Mr. Bayard submitted proposed Findings of Fact for the Council's consideration.

There were no public comments and the Public Hearing was closed.

M 625 05
Adopt
Ordinance
No. 1806
(C/U
No. 1624)

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1806 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (64 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 16.01 ACRES, MORE OR LESS" (Conditional Use No. 1624) filed on behalf of Design Consultants Group, L.L.C., with the following conditions:

1. The maximum number of residential units shall not exceed 64

**M 625 05
(continued)**

- townhouse condominium units.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 3. The swimming pool shall be constructed and open to use by residents within two years of issuance of the first building permit for the project.
 4. The development shall be served as part of a Sussex County Sewer District and the developer shall install all sewer infrastructure at its own expense to connect to the existing sewer according to all Engineering Department standards.
 5. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these features.
 7. The stormwater management pond on the southeast corner of the project shall be shielded from the view of Route 358 by landscaping and a berm.
 8. Site plan review of each phase of development shall be subject to the approval of the Planning and Zoning Commission.
 9. The interior street design shall be in accordance with or exceed Sussex County street design requirements.
 10. Sidewalks shall be installed along at least one side of the streets.
 11. Street lights shall be installed with downward illumination and shown on the final site plan.
 12. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.
 13. Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impacts.
 14. Signage shall be limited to one ground sign, not exceeding 32 square feet per side or facing.
 15. Road and community naming and addressing shall be approved by the Sussex County Mapping & Addressing Department.
 16. All garage openings shall face the interior of the project.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**Public
Hearing**

**A Public Hearing was held on the Proposed Ordinance entitled "AN
ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR**

(C/U
No. 1625)

GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE STORAGE OF POWERWASHING EQUIPMENT, LANDSCAPING SUPPLIES, AND LAND CLEARING EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.162 ACRES, MORE OR LESS” (Conditional Use No. 1625) filed on behalf of Samuel S. Connors.

**Public
Hearing
(C/U
No. 1625)
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on October 27, 2005 at which time they recommended that the application be approved, with conditions.

(See the minutes of the Planning and Zoning Commission dated October 27, 2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing and recommendation of approval. The summary was admitted as part of the County Council’s record.

Mr. Stickels suggested an additional condition to the nine proposed by the Commission relating to requiring the applicant to obtain a highway entrance permit.

The Council found that Samuel Connors and Larry Fifer, Attorney, were present on behalf of the application. They stated that they are in agreement to the nine conditions proposed by the Commission and the condition recommended by Mr. Stickels; that the residents’ concerns are unwarranted since the applicant does not plan to do anything on the property that would be offensive to anyone; that the applicant plans to construct a primary residence on the site; that there will be no retail or wholesale activities on site; that the applicant proposes the construction of a 30’ x 80’ pole building to store equipment; that he has hauled in excess of 100 loads of debris from the site; that all storage will be inside; that business hours will not exceed 7:00 a.m. to 7:00 p.m. Monday through Saturday with no Sunday hours; that all work would be performed off-site; that no customers will come to site; and that he has no objection to fencing or screening the side property line being required.

John Connors, father of the applicant, spoke in support of the application. He stated that there has been a misunderstanding with neighbors; that the application is for a conditional use; that his son would not be seeking a change of zone; that the current site of the business (Super Clean in Lewes) is kept immaculate; that the rent is going to be increased and his son is looking for a new site; and that his son will be respectful to his neighbors.

Public comments were heard.

The Council found that Lucinda Allen, Bridgett Turner, and Rosalyn

**Public
Hearing
(C/U
No. 1625)
(continued)**

Eckels spoke in opposition to the application. They stated that they are against commercial uses in the residential area; that it would set a precedent in the area; that there are other people operating businesses in the area which cause problems in the neighborhood; that this is the premise on which people are opposed to another business coming to the area; that some of the businesses do not have the proper permits to operate; that the character of the area is residential and should remain that way; that the bridge in the area has a tonnage limit; that huge containers of bleach would be stored on the site and would create health and safety dangers; that Jim Town residents do not want to be run out of their community; that the business will not be a benefit to the immediate community; and that the business will disturb the neighbors.

The Public Hearing was closed.

**M 626 05
Defer
Action on
C/U
No. 1625**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1625 filed on behalf of Samuel S. Connors to allow time for the Council to obtain information from the Planning and Zoning Department regarding other commercial activities in the area to ascertain an indication of the character of the neighborhood.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**Public
Hearing
(C/U
No. 1626)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR DOG GROOMING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8,276 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1626) filed on behalf of Julie Bernick and Deborah Safee.

The Planning and Zoning Commission held a Public Hearing on this application on October 27, 2005 at which time they deferred action.

(See the minutes of the Planning and Zoning Commission dated October 27, 2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the County Council's record.

The Council found that Julie Bernick was present on behalf of the application. She stated that she purchased the property in January; that the site was formerly used as a dental office; that the business should create

less traffic than the previous use; that there would be no impact to the surrounding area; that sufficient parking exists on the site; that she would like to be able to groom up to 20 dogs per day; that one sign exists facing Route 30; that at some future time, she may want an additional sign; that business hours would not exceed 8:00 a.m. to 6:00 p.m. Thursday through Monday; that there would be no kenneling overnight; that there is no similar business in Millsboro and that it is a highly sought after service.

(continued) There were no public comments.

M 627 05
Adopt
Ordinance
No. 1807
(C/U
No. 1626)

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 1807 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR DOG GROOMING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8,276 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1626) filed on behalf of Julie Bernick and Deborah Safee, with the following conditions:

1. Business shall not exceed 8:00 a.m. to 6:00 p.m. Thursday through Monday.
2. There shall not be any kenneling overnight.
3. The existing sign is permitted to remain and any revised wall signage shall not exceed the size of the existing wall sign. One lighted ground sign shall be permitted, not to exceed 32 square feet per facing.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
5. The applicant shall be required to obtain an entrance permit from DelDOT.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

Public
Hearing
(C/Z
No. 1581)

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 40,000 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1581) filed on behalf of George C. Coverdale.

The Planning and Zoning Commission held a Public Hearing on this application on October 27, 2005 at which time they deferred action.

(See the minutes of the Planning and Zoning Commission dated October 27,

2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the County Council's record.

Public
Hearing
(C/Z
No. 1581)
(continued)

George Coverdale was present on behalf of his application along with Tim Willard, Attorney. They stated that a 60' x 30' warehouse building (with four garage doors) was constructed on the property in March of 2005; that all of the garages are empty except one; that one garage contains personal property; that he understands he cannot use the building for anything except domestic storage without the County's approval; that a house exists on the site that he may want to rent for office space or he may want to construct a storage facility; that DelDOT did not require a Traffic Impact Study; that several businesses and commercial uses exist in the area; that the application is consistent with the Land Use Plan; that the site is located in the Environmentally Sensitive Development District; that the Office of State Planning Coordination stated (through the PLUS process) that the project does not impose a significant impact on State interests; and that if commercial zoning is granted, the applicant would probably rent the space for storage or small contractors; and that a stormwater management plan is being pursued to meet the regulations of the Sussex Conservation District.

Mr. Cole commented that there is a sewer capacity problem and that the Council needs to be cognizant of that fact.

The Public Hearing was closed.

M 628 05
Defer
Action
on C/Z
No. 1581

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to defer action on Change of Zone No. 1581 filed on behalf of George C. Coverdale.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

Public
Hearing
(C/Z
No. 1582)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.70 ACRES, MORE OR LESS, OF A 5.08 ACRE TRACT" (Change of Zone No. 1582) filed on behalf of MARDELVA, LLC.

The Planning and Zoning Commission held a Public Hearing on this

application on October 27, 2005 at which time they recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated October 27, 2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

**Public
Hearing
(C/Z
No. 1582)
(continued)**

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing and the recommendation of approval. The summary was admitted as part of the County Council's record.

The Council found that John Congedo of MARDELVA, LLC was present with Mark Davidson of DC Group. They stated that they are requesting a rezoning of the rear portion of the property (approximately 2.7 acres of the 5.0 acres) located on the northbound side of Route 13; that the property is currently dual-zoned, with the front 2.3 acres zoned C-1 General Commercial and the back 2.7 acres zoned AR-1 Agricultural Residential; that they propose to build two buildings on the rear portion of the site; that they currently employ approximately 35 people; that the firm is technology-based and they use technology to carve and polish stone for the developing commercial and residential communities in the area; that they propose to provide other contractors in the area with a facility for offices and manufacturing which would enable them to feed on the same client base; that the business does not generate a lot of traffic; that a Traffic Impact Study was not required; that the entrance would be shared with the neighbor to the south; that no wetlands exist on the site; and that they have received approval from DNREC for an on-site wastewater system.

There were no public comments and the Public Hearing was closed.

**M 629 05
Adopt
Ordinance
No. 1808
(C/Z
No. 1582)**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Ordinance No. 1808 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.70 ACRES, MORE OR LESS, OF A 5.08 ACRE TRACT" (Change of Zone No. 1582) filed on behalf of MARDELVA, LLC.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**M 630 05
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to adjourn at 3:33 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**